

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARIO DEONTE DUNLAP,

Defendant-Appellee.

UNPUBLISHED

June 12, 2007

No. 270365

Wayne Circuit Court

LC No. 06-000952-02

Before: Fitzgerald, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Defendant was charged with possession with intent to deliver 50 or more but less than 450 grams of cocaine, MCL 333.7401(2)(a)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b(1). The trial court granted defendant’s motion to suppress the evidence and dismissed the charges. Plaintiff appeals as of right. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In reviewing a motion to suppress evidence, this Court reviews the trial court’s factual findings for clear error but reviews its ultimate decision de novo. *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999). When reviewing a magistrate’s conclusion that probable cause to search existed, this Court does not review the matter de novo or apply an abuse of discretion standard. *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992). Paying deference to the magistrate’s determination that probable cause did exist, this Court considers only whether the actual facts and circumstances presented to the magistrate would permit a reasonably cautious person to conclude that there was a substantial basis for the finding of probable cause. *People v Sloan*, 450 Mich 160, 168-169; 538 NW2d 380 (1995), overruled in part on other grounds by *People v Hawkins*, 468 Mich 488, 502, 511; 668 NW2d 602 (2003), and by *People v Wager*, 460 Mich 118, 123-124; 594 NW2d 487 (1999).

Issuance of a search warrant must be based on probable cause. MCL 780.651(1). “Probable cause to issue a search warrant exists where there is a ‘substantial basis’ for inferring a ‘fair probability’ that contraband or evidence of a crime will be found in a particular place.” *People v Kazmierczak*, 461 Mich 411, 418; 605 NW2d 667 (2000). “A magistrate can consider only the information in the affidavit made before him in determining whether probable cause exists to issue a search warrant.” *People v Sundling*, 153 Mich App 277, 285-286; 395 NW2d 308 (1986). The affidavit may be based on information supplied to the affiant by another person. If the other person is not named, the affidavit must contain affirmative allegations from which

the magistrate may conclude that the person spoke with personal knowledge of the information provided and that the person is either credible or his or her information is reliable. MCL 780.653(b). The search warrant and underlying affidavit are to be read in a commonsense and realistic manner. *Russo, supra* at 604. Timeliness of the information is a consideration in determining if probable cause exists. *Id.* at 605.

“In general, the requirement that the informant have personal knowledge seeks to eliminate the use of rumors or reputations to form the basis for the circumstances requiring a search.” *People v Stumpf*, 196 Mich App 218, 223; 492 NW2d 795 (1992). Here, that the confidential informant (CI) spoke with personal knowledge can be inferred from the facts provided in the affidavit, such as the subjects’ names, their address, and descriptions of the subjects and the cars they drove, as well as the statement that the CI had been inside the subjects’ house.¹ *Id.* The information, if reliable or provided by a credible person, established probable cause to believe contraband would be found in the place to be searched. The CI reported that he or she had seen both drugs and a gun in the subjects’ house in the past 48 hours and the subjects reported that the drugs were for sale, which indicated an ongoing criminal enterprise that increased the likelihood of drugs being found on the premises at any given time.

The police did not do any independent investigation to verify the information provided by the CI and thus the affidavit failed to show that the information was reliable. However, the affidavit indicated that the CI had previously provided reliable information that led to both arrests and the seizure of controlled substances, indicating that the CI was credible. *People v Sherbine*, 421 Mich 502, 510 n 13; 364 NW2d 658 (1984), overruled in part on other grounds by *Hawkins, supra* at 502.

Reversed and remanded for reinstatement of the charges against defendant. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Peter D. O’Connell

¹ To the extent that the trial court found that the affidavit indicated that the CI had not been in the house, it clearly erred. The affidavit consistently used the third-person plural pronouns “they” and “them” to refer to the CI, the commonly accepted if grammatically incorrect way to refer to one person without specifying the person’s sex. The affidavit stated that the CI reported “they were inside of” the house within the past two days.